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U.S. Weighs Prosecuting Press Leaks

By George Lardner Jr.
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The Reagan administration is considering the criminal prosecution of five news organizations for publishing information about U.S. intelligence-gathering operations, particularly intercepted communications reflecting U.S. code-breaking capabilities.

Central Intelligence Agency Director William J. Casey said he had discussed the possibility of such prosecutions—never previously initiated against a newspaper or magazine—with Deputy Attorney General D. Lowell Jensen at a meeting last Friday at the Justice Department.

"We've already got five absolutely cold violations," Casey told two Washington Post editors whom he met with later that day. Casey apparently was referring to alleged violations of a 1950 statute that prohibits "knowingly and willfully" disclosing or publishing classified information about codes, ciphers or "communication intelligence activities of the United States or any foreign government." The CIA director added, however, that no final decision had been made about whether indictments would be sought.

Casey named the five news organizations as The Washington Post (for reporting on U.S. intercepts of messages between Tripoli and the Libyan People's Bureau in East Berlin), Newsweek (also for reporting on intercepted Libyan communications), The Washington Times, The New York Times and Time magazine, the last three for unspecified stories.

In addition, Casey warned Post editors that possible prosecution against this newspaper would be "an alternative that would have to be considered" if The Post were to publish another story it has prepared concerning U.S. intelligence capabilities, but which the newspaper has not yet decided whether to publish.

"I'm not threatening you," Casey told Post Executive Editor Benjamin C. Bradlee and Managing Editor Leonard Downie Jr. during a meeting at the University Club last Friday. "But you've got to know that if you publish this, I would recommend that you be prosecuted under the intelligence statute."

Bradlee and Downie declined to discuss the unpublished article.

In the meeting, held at Casey's request, the CIA director did not specify what statute he had in mind, mentioning only "the intelligence statute" and "the criminal statute." But he appeared to be referring to Section 798 of Title 18 of the U.S. Code, the so-called "COMINT statute" that Congress first passed in 1950 to protect U.S. communications intelligence activities.

"I mentioned [Section] 798," Bradlee recalled. "He [Casey] said 'Yeah, yeah, I don't practice law anymore. You know what I'm talking about.' "

White House national security affairs adviser John M. Poindexter and Gen. William Odom, director of the code-breaking National Security Agency, also have said the administration was looking for ways to stop a recent spate of leaks to the news media. "We're dusting off 18 USC 798," Odom told one Post editor.

The law carries a maximum penalty of 10 years in prison and a $10,000 fine.

Officials of the other publications Casey mentioned said they knew of no similar warnings from Casey or any other high-ranking administration official about any stories of theirs.

"It's news to me," said New York Times Executive Editor A.M. Rosenthal. "I know we did stories [in recent weeks] that referred to intercepts [of Libyan cables] from East Berlin. But I know nothing officially about it."

Arnaud de Borchgrave, editor-in-chief of The Washington Times, said, "This comes like a bolt out of the blue . . . . I have been chewed out by Bill Casey at private dinners, but in a very friendly way. There was nothing menacing about it."

Stephen Smith, executive editor of Newsweek, and Harry Johnston, general counsel for the Time magazine group, said they knew nothing about any possible prosecution.

Officials at the Justice Department refused to comment. Jensen declined through a spokesman to grant an interview or to consider any questions on the subject. He would not confirm or deny that he met with Casey last Friday.

"There isn't really much we can say about it," said Justice Department spokesman Patrick Korten. "Whatever conversations are held at this point should probably be between Bradlee and Casey and perhaps [Attorney General Edwin] Meese."

The threat of criminal prosecutions follows an increasingly vigorous administration effort to crack down on unauthorized leaks of sensitive information.

In 1983, for instance, Reagan issued a national security directive that would have required every federal employe with a security clearance to submit to lie detector tests if asked. It also would have set up a lifetime system of prepublication censorship for officials with access to especially sensitive information. Those provisions were shelved following a storm of congressional criticism, but thousands of officials are being required, under another portion of the directive, to acknowledge in writing that they face criminal and civil penalties for any unauthorized disclosures for the rest of their lives.

Another sign of an administration crackdown was the firing last week of an assistant undersecretary of defense, Michael E. Pillsbury, for allegedly giving reporters information about an administration decision to supply advanced Stinger missiles to resistance forces in Angola and Afghanistan.

Last fall, the Justice Department successfully prosecuted former naval intelligence analyst Samuel Loring Morison for furnishing three secret U.S. spy satellite photos to a British magazine. Morison, who was sentenced to two years for espionage and theft but is now free on appeal, was the first person convicted of a crime for leaking national security information to the press. He was found guilty under an interpretation of the law that could sub-

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...ject news organizations, as well as their sources, to criminal prosecution.

The COMINT statute did not come into play in the Morison case, but it is more explicit and, experts say, more precisely drafted than the one used at that trial. Its history goes to 1945 when Congress considered, and rejected, a much more sweeping proposal that critics said would have made it a crime to publish any information that may have been transmitted in code, even U.S. diplomatic and military dispatches that routinely produced news stories.

Under that proposal, Rep. Clare Boothe Luce (R-Conn.) protested at the time, "no newspaperman could get what is called the inside or background information anywhere in Washington without going to the head of the department to get it as a direct handout."

Five years later, Congress came back with what is now Section 798, limiting its coverage to classified information about the ciphers, codes and cryptographic systems "of the United States or any foreign government" and several other related categories including classified information "obtained by the process of communications intelligence from the communications of any foreign government."

Prosecutions under the law have been few and far between. One of the most celebrated involved Christopher Lee Boyce, who was sentenced in 1977 to 40 years in prison for selling Soviet agents secrets that he had obtained from a secret code room operated for the CIA in Redondo Beach, Calif.

More recently, the statute played a role in the 1982-83 controversy over the Reagan administration's nomination of former New York Times reporter Richard R. Burt as assistant secretary of state.

Burt came under fire from Senate conservatives for a 1979 story he wrote disclosing the existence of an operational intelligence satellite system, code-named Chalet, that involved use of an electronic listening post in Norway. Burt's critics said the story clearly violated Section 798; they said a vote to confirm Burt would undercut any future use of the law.

"How could anyone be prosecuted under that law if you are awarded this position of great honor and responsibility?" Sen. Orrin G. Hatch (R-Utah) asked at one point.

Secretary of State George P. Shultz, however, took the position that "whoever leaked the material is at fault"—not Burt. The Senate voted 81 to 11 to confirm Burt.

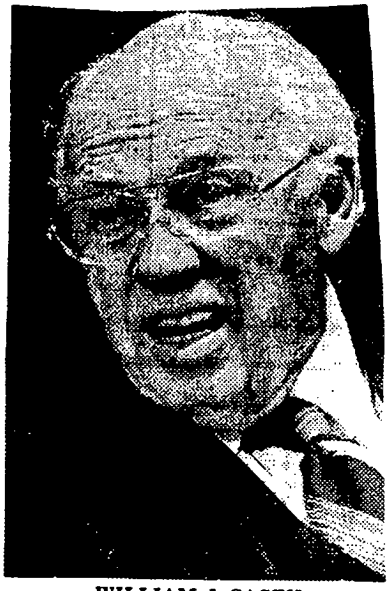
Although much recent reporting on intelligence matters has involved covert operations rather than communications intelligence, numerous news organizations have published information about secret communications intercepts.

For example, during the Nixon administration, The Washington Post reported that U.S. intelligence had systematically intercepted radio telephone traffic between members of the Soviet Politburo while they were traveling by car.

In the first year of the Reagan administration, Newsweek cited "administration sources" in reporting that Libyan leader Muammar Qaddafi had made threatening statements toward President Reagan in an "intercepted telephone conversation." This intercept and other intelligence evidence later formed the basis for claims that Libya had sent "hit teams" to the United States to kill U.S. officials.

A Post story quoting from intercepted Libyan messages was published after Reagan's televised disclosure of several messages between Tripoli and its People's Bureau in East Berlin.

"The president himself first revealed the nature of these intercepted messages," said Downie, The Post's managing editor. "What we reported subsequent to that—details of the intercepts—did not do anything more to reveal our intelligence capabilities than the president himself did."



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